Cri Appeal 144/96

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000059482

(2)

APPEAL OF PRISONER Division Bench (Criminal)

No. 2852/48 Name ગુડ્ડુ રામ પ્રતાપ

Father's name બાબુલાલ સાકિન મોઢ આના તલવડુર

Residence જિલ્લા નિમાચ(મ.પ્ર.) Age ૨૨ વર્ષ

Sentenced to આજીવન કારાવાર On ૨/૧૦/૯૫

Under section ૩૦૨ મ.પ્ર. by સત્રમ અતિરિક્ત સત્ર ન્યાયાધીશ નિમાચ (મ.પ્ર.)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ૨/૧૦/૯૫

2 Date on which copy received ૨૧/૧૨/૯૫

3 Date on which Appeal sent ૧/૧/૯૬

4 Whether the prisoner wishes to be represented or ~~not~~ – Yes / No

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No. 2852/48 Name ગુડ્ડુ પિતા રામ પ્રતાપ આદ બાબુલાલ

Confined in ખંડવા Jail નિમાચ (મ.પ્ર.)

No. 7 Dated 8/1/96

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ અતિ.સે.ન્યા.મ.પ્ર. નિમાચ (મ.પ્ર.)

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

સંલગ્ન નિર્ણય અરજિની
સી. પી. સ. 112/94

Superintendent
Jail

Date of receipt in ..... office 7-10-95 to 8-1-96

Date of receipt record to accompany the 001 94
787 30
Memo of Appeal to the Appellate court 2.6.96 31
Jun 96

No ..... Dated 199 93

Forwarded to the 60

33 Time barred

Date of receipt in Appellate Court 20 JAN 1996

High Court of Madhya Pradesh
JABALPUR
Reg. No. 81
Recept Clerk
High Court, Jabalpur

(P. T. O.)

(7) (12)

XI-HC-22

H.C.R.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A No.144/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

15-12-2005

Miss Sangeeta Mishra, counsel for the appellant.

Shri Ashish Shukla, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment.

By this appeal through Superintendent, Central Jail, Raipur, accused Guddu @ Rampratap has questioned the legality of the judgment of conviction and sentence dated 7-10-1995 passed by the 7th Additional Sessions Judge, Bilaspur, in S.T. No.112/94 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Section 302 of the I.P.C. for committing murders of Jharokha and Shyamlal, sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that on 25-12-93 complainant Bajrang woke up at 3 a.m. and after finishing the work at his residence, he went for work in his garden. At that time, his uncle Shyamlal went towards the river for taking bath and 15 minutes thereafter his father Jharokha went towards the river for taking bath.

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At about 6 a.m. his brother Geeta came to him and on enquiry, he informed that Jharokha and Shyamlal have been murdered. When he went towards the site, he saw that the dead body of his father was lying on the road. There were injuries on his mouth, cheek and parietal region and the body was lying in the pool of blood. At some distance, his uncle Shyamlal's body was lying and there were injuries on the head and thigh and blood was oozing out of it. On the previous day i.e. Friday at about 7 p.m. accused Guddu was telling him that his uncle Shyamlal has illicit relations with his mother, therefore, he will murder Shyamlal and he will outrage the modesty of the family members of Shyamlal. On the report, the F.I.R. (Ex.-P/13) was registered by Head Constable Mahendra Singh (PW-12). He left for the scene of occurrence. He prepared Panchanama of the dead bodies of Shyamlal and Jharokha under Ex.-P/3 and P/4 respectively. He took into possession the blood stained soil and plain soil from the respective places of occurrence under Ex.-P/5 and P/6. While in the police custody, the accused/appellant gave a memorandum Ex.-P/7 regarding the place where he kept Tabbal (Spade) and in pursuance of that, Tabbal was recovered under Ex.-P/8 and same was stained with blood. The dead bodies of Jharokha and Shyamlal were sent for postmortem examination to the Community Health Centre, Takhatpur where Dr. Habib (PW-7) conducted the postmortem on the dead bodies

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of Jharokha and Shyamlal. He prepared the postmortem reports of the dead bodies of Jharokha and Shyamlal under Ex.-P/15 and P/14 respectively. The clothes which were on the dead bodies of Jharokha and Shyamlal were taken into possession under Ex.-P/17. The site plan (Ex.-P/20 and P/21) of the place of occurrence was prepared. The recovered articles were sent to the Forensic Science Laboratory, Bilaspur from where report Ex.-P/24 was received. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Bilaspur, who in turn committed the case to the Sessions Judge, Bilaspur from where learned 7th Additional Sessions Judge received the case for trial.

The prosecution in order to establish the charge against the accused/appellant examined 16 witnesses. On the other hand, the statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and he has been falsely implicated in the crime on account of animosity.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for the parties, convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

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The fact of nature of the death of Jharokha and Shyamlal as homicidal has not been disputed by learned counsel for the accused/appellant. Apart from that, from the evidence of PW-7 Dr. Habib and from the postmortem reports Ex.-P/14 and P/15 it is established that the death of Jharokha and Shyamlal was homicidal in nature.

Now, coming to the involvement of the accused/appellant in committing murders of Jharokha and Shyamlal, there is no ocular evidence in this case. PW-8 Ramadhar was produced as eyewitness but unfortunately, this witness turned hostile. There is no other ocular evidence in connection with the crime. Therefore, the whole case of the prosecution rests on the circumstantial evidence which are as follows:-

(1) Motive;

In the previous evening the accused/appellant said to Bajrang (PW-5), son of deceased Jharokha, that his uncle is having illicit relations with his mother, therefore, he should be advised. He was also openly saying that he would murder Shyamlal and he would outrage the modesty of the daughters and wife.

(2) The accused was seen nearby the place of occurrence by PW-6 Mongara Bai on the date of the occurrence with Tabbal, weapon of offence and;

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(3) The weapon of offence i.e. Tabbal was recovered in pursuance of the memorandum Ex.-P/7 given by the accused.

In order to rest conviction based on the circumstantial evidence, as per the settled principles laid down by the Hon'ble Apex Court in the matter of **NESAR AHMED VS. STATE OF BIHAR** reported in **AIR 2001 Supreme Court 2416** i.e. in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point to the guilt of accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

Now, we shall proceed to examine the evidence adduced by the prosecution as to whether the prosecution has been able to establish the charge against the accused based on the above principle.

(1) As far as first point is concerned, PW-5 Bajrang, who lodged the report at the Police Station and is also son of deceased Jharokha, in his evidence has stated that his uncle Shyamlal was having illicit relations with the mother of accused namely Ram Bai. The

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accused himself asked him to advise Shyamlal. On the previous evening of the occurrence the accused was crying in the village that he would murder Shyamlal or he would outrage the modesty of the family members of Shyamlal because he was outraging the modesty of his mother. This fact was mentioned by him in the F.I.R. (Ex.-P/13) which was lodged at 9.30 p.m. within 3 hours of the commission of the offence. Apart from that, this witness has not been cross-examined on this aspect that the accused asked him to warn Shyamlal; on the previous day evening he was openly crying that he would kill Shyamlal. Of-course, he has been cross-examined on other parts. Moreover, this part of the evidence he made known to the police in the F.I.R. within no time. In the cross-examination, this aspect has not been questioned, therefore, there is no reason before this Court to disbelieve this witness on the above aspect. Therefore, from the above evidence, the motive of the accused for the commission of heinous crime stands established.

(2) As far as the question to the effect that the accused was seen with the weapon of offence in the vicinity of the place of occurrence just before the commission of crime, PW-6 Mongara Bai has stated that on Saturday morning after waking up when she

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was cleaning the courtyard, she saw that the accused was going towards the temple carrying Tabbal in his hand. Thereafter, she went to the house of Deewan for fetching basket. She stayed there for some time and wife of deceased Jharokha called the Kotwar. She was saying that something has happened. The Kotwar and the wife of Jharokha were going towards the river. In para-4 she has stated that when she was going to the house of Deewan for fetching basket, the accused was standing on the main road near the temple keeping Tabbal (spade), weapon of offence, on the wall. After some time, she came to know about the murders of Jharokha and Shyamlal. In the cross-examination, the defence has not been able to elicit anything which makes the evidence of this witness unreliable or untrustworthy. The site plan (Ex.-P/20) of the place of occurrence prepared by Patwari indicates that the bodies of Shyamlal and Jharokha were lying at places '1' and '2' and this witness namely Mongara Ba saw the accused carrying Tabbal from point No.4. The accused was seen at point No.7 carrying Tabbal and at point No.5 temple was existing. This map was prepared in the presence of Mongara Bai. Similar is the map prepared by the I.O. (Ex.-P/21). Therefore, in view of the above, it is established that the accused was seen near the place of

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occurrence just before the incident carrying 'Tabbal', weapon of offence.

(3) As far as third point is concerned, PW-11 S.L. Kanwar, the I.O., has stated that on 26-12-93, in the police custody, enquiries were made from the accused upon which he disclosed that he has kept Tabbal in a hut in a concealed condition and he can get the same recovered, which was reduced in writing and based on the memorandum (Ex.-P/7) Tabbal was recovered at the instance of the accused under Ex.-P/8. PW-16 Radheshyam has also stated that the accused gave a memorandum (Ex.-P/7) and got recovered Tabbal under Ex.-P/8 which bears his signatures.

Therefore, in view of the above evidence, Tabbal in question was recovered at the instance of the accused from the hut in a concealed condition. It is mentioned in the recovery memo that there was blood stains on Tabbal and same was sent to the F.S.L., Bilaspur and report of the F.S.L., Bilaspur Ex.-P/24 mentions that Tabbal was found stained with blood. PW-7 Dr. Habib has stated that injuries which were found on the body of deceased could be caused by Tabbal in question.

Now, if we look into all the 3 aspects i.e. on the previous evening the accused was openly saying that Shyamlal is having illicit relations with his mother, therefore, he will kill him. He also asked PW-5 to advise

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his uncle about the relations with his mother, therefore, motive for commission of the crime was established. Thereafter, on the date of the offence, just before the offence was committed, the accused was seen with Tabbal near the place of occurrence and Tabbal was recovered at the instance of the accused stained with blood and the medical evidence of PW-7 is to the effect that injuries could have been caused by same Tabbal. Therefore, chain of the circumstances is complete and points towards the fact that the accused was author of the crime and there was no possibility of his innocence or involvement of any other person in crime.

Therefore, the prosecution has successfully established the charge against the accused/appellant based on the legal and clinching circumstantial evidence, as such finding of the trial Court convicting the accused/appellant for the commission of murders of Shyamlal and Jharokha is based on the legal evidence which requires no interference by this Court.

In the result, the appeal being devoid of merit is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K. Shrivatava
Judge

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29.12.09 16/6/09

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